

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, To Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and Charges for Gas Service Effective on January 1, 2003.
(U 39 M)

Application 02-11-017
(Filed November 8, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company.

Investigation 03-01-012
(Filed January 16, 2003)

Application of Pacific Gas and Electric Company Pursuant to Resolution E-3770 for Reimbursement of Costs Associated with Delay in Implementation of PG&E's New Customer Information System Caused by the 2002 20/20 Customer Rebate Program.
(U 39 E)

Application 02-09-005
(Filed September 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON REQUEST TO SUBMIT SURREBUTTAL TESTIMONY**

This ruling grants in part and denies in part the May 15, 2006 motion by Pacific Gas and Electric Company (PG&E) to submit surrebuttal testimony.

Motion for Surrebuttal

On May 15, 2006, at the Prehearing Conference, PG&E moved to serve surrebuttal testimony to address alleged new factual evidence raised in rebuttal testimony submitted by the Consumer Protection and Safety Division (CPSD)

and The Utility Reform Network (TURN). Oral argument on PG&E's request was heard at the PHC. (See RT. Pages 154-170, dated May 15, 2006.)

PG&E contends the new factual issues were raised in the rebuttal testimony improperly and that due process requires it be allowed to respond to the alleged new factual issues. PG&E maintains that if its request is denied, PG&E will be forced to respond to the evidence through cross-examination of CPSD and TURN witnesses and redirect testimony from its own witnesses. PG&E claims that such an effort would be incomplete and inefficient. Specifically, PG&E claims that CPSD and TURN included new evidence of individual customer cases that they allege demonstrate customer harm. PG&E also claims that the testimony of TURN witness Michel Peter Florio involves substantial new evidence and argument regarding whether established Commission ratemaking policy requires PG&E shareholders to fund any refunds that may be ordered in this investigation.

CPSD and TURN oppose PG&E's motion and argue that the request for surrebuttal is inappropriate and there is no due process requirement that warrants granting PG&E's request. CPSD claims that the evidence presented in rebuttal was not new, and was made in direct response to PG&E's responsive testimony. CPSD and TURN also argue that Rule 57 of the Commission's Rules of Practice and Procedure sets forth the order of procedure for Commission proceedings. Specifically, CPSD and TURN state that Rule 57 provides in pertinent part that in "...investigation proceedings, the Commission's staff shall open and close."

In addition, CPSD and TURN note that PG&E has had sufficient time to conduct discovery and raise issues regarding CPSD's and TURN's testimony prior to the PHC, and that granting PG&E's request at this late date would cause

an unnecessary delay in the proceedings of up to four weeks to allow CPSD and TURN to conduct depositions and submit sur-surrebuttal.

Discussion

PG&E's request to filed surrebuttal testimony in response to TURN witness Florio's rebuttal testimony is denied. Florio's rebuttal testimony responds directly to PG&E Witness Christie McManus' testimony on ratemaking. Specifically, in response to TURN's testimony recommending that shareholders be responsible for refunds, PG&E provided various arguments as to why ratepayers should be responsible. TURN's rebuttal testimony appropriately responds point-by-point to McManus' testimony.

Although it is highly unusual to allow surrebuttal, an extremely limited surrebuttal is justified in this case. While neither CPSD nor TURN have offered "new" theories or allegations in their rebuttal, the customer-specific documentation provided in response to PG&E's testimony is evidence that could have been provided in the opening testimony. Therefore, I will provide PG&E the opportunity to provide limited surrebuttal testimony responding only to the customer-specific information.

This ruling allows PG&E to present limited additional written testimony responding only to the specific customer information referenced by CPSD on page 6 through the first paragraph on page 11 and in Attachments 1 and 2 of CPSD's rebuttal testimony, and the specific customer information identified by TURN on page 12 through page 19 and Exhibit 1 of TURN's rebuttal testimony. PG&E may submit limited surrebuttal on this topic only because the record will benefit from a full understanding of the customer complaints. PG&E's surrebuttal shall be limited to customer-specific information and shall not include additional policy testimony.

PG&E shall serve any such surrebuttal by 5:00 p.m., Wednesday, May 17, 2006. PG&E will have the opportunity to test the remaining evidence offered by CPSD and TURN through cross-examination of CPSD and TURN witnesses and redirect testimony from its own witnesses.

I will allow CPSD and TURN to serve written sur-surrebuttal testimony following PG&E's submittal, at their option, by noon Tuesday, May 23, 2006. CPSD and TURN retain the burden of proof in this investigation and should continue to have the opportunity to close the testimony as required by Rule 57. Any such sur-surrebuttal shall also be limited to customer-specific information concerning customer identified in CPSD and TURN's testimony to date. It is my understanding that discovery has been ongoing in this case for well over a year, therefore all parties should have had ample opportunity to conduct discovery and obtain the relevant data.

IT IS RULED that

1. The May 15, 2006 motion by Pacific Gas & Electric Company (PG&E) for leave to submit surrebuttal is granted in part and denied in part as discussed herein.
2. PG&E shall serve the surrebuttal testimony permitted by this ruling by 5:00 p.m., Wednesday, May 17, 2006.
3. Consumer Protection and Safety Division and The Utility Reform Network may serve the written sur-surrebuttal testimony permitted by this ruling by noon, Tuesday, May 23, 2006.

Dated May 16, 2006, at San Francisco, California.

/s/ JULIE HALLIGAN
Julie Halligan
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on Request to Submit Surrebuttal Testimony on all parties of record in this proceeding or their attorneys of record.

Dated May 16, 2006, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

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